

AMENDED IN SENATE APRIL 21, 1998

**SENATE BILL**

**No. 1608**

**Introduced by Senator Ayala  
(Coauthor: Senator Kopp)**

February 12, 1998

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An act to amend ~~Section 577 of, and to add Section 681.011 to, the Code of Civil Procedure, and to add Section 1202.4a to Sections 1202.4 and 1203.1 of the Penal Code, relating to restitution.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1608, as amended, Ayala. Judgments: criminal restitution orders.

~~The Enforcement of Judgments Law establishes procedures under which judgments involving money, personal property, real property, or requiring performance of an act, are enforceable, as specified.~~

~~This bill would provide that a criminal restitution order, not satisfied on termination of probation, may be enforced as a civil judgment by the victim or victims named in the restitution order, upon the filing of a Certified Acknowledgment of Restitution Owed, as specified, and would prescribe procedures in connection therewith.~~

~~Because this bill would impose additional duties on local officials, it would result in a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State~~



~~Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

*Under existing law, the court, in connection with granting probation, shall provide for restitution in proper cases. Existing law also provides that, upon a person being convicted of any crime in this state, the court shall order the defendant to pay restitution to any victim or victims that have suffered economic loss as a result of the defendant's conduct in an amount established by court order and that a restitution order may be enforced as if it were a civil judgment issued pursuant to certain provisions of law, as specified.*

*This bill would provide that a restitution order in favor of a victim shall be fully enforceable as a civil judgment, as specified, and would delete the reference to a certain provision of law governing restitution fines in regard to its enforcement.*

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ no.  
State-mandated local program: ~~yes~~ no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. ~~Section 577 of the Code of Civil 1202.4 of~~
- 2 *the Penal Code is amended to read:*
- 3 1202.4. (a) (1) It is the intent of the Legislature that
- 4 a victim of crime who incurs any economic loss as a result
- 5 of the commission of a crime shall receive restitution
- 6 directly from any defendant convicted of that crime.
- 7 (2) Upon a person being convicted of any crime in the
- 8 State of California, the court shall order the defendant to
- 9 pay a fine in the form of a penalty assessment in
- 10 accordance with Section 1464.
- 11 (3) The court, in addition to any other penalty
- 12 provided or imposed under the law, shall order the
- 13 defendant to pay both of the following:



(A) A restitution fine in accordance with subdivision (b).

(B) Restitution to the victim or victims, if any, in accordance with subdivision (f), which shall be enforceable as if the order were a civil judgment pursuant to Section 1214.

(b) In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record.

(1) The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense, but shall not be less than two hundred dollars (\$200), and not more than ten thousand dollars (\$10,000), if the person is convicted of a felony, and shall not be less than one hundred dollars (\$100), and not more than one thousand dollars (\$1,000), if the person is convicted of a misdemeanor.

(2) In setting a felony restitution fine, the court may determine the amount of the fine as the product of two hundred dollars (\$200) multiplied by the number of years of imprisonment the defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is convicted.

(c) The court shall impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution fine. Inability to pay may be considered only in increasing the amount of the restitution fine in excess of the two-hundred-dollar (\$200) or one-hundred-dollar (\$100) minimum.

(d) In setting the amount of the fine pursuant to subdivision (b) in excess of the two-hundred-dollar (\$200) or one-hundred-dollar (\$100) minimum, the court shall consider any relevant factors including, but not limited to, the defendant's inability to pay, the seriousness and gravity of the offense and the circumstances of its



1 commission, any economic gain derived by the defendant  
2 as a result of the crime, the extent to which any other  
3 person suffered any losses as a result of the crime, and the  
4 number of victims involved in the crime. Those losses  
5 may include pecuniary losses to the victim or his or her  
6 dependents as well as intangible losses, such as  
7 psychological harm caused by the crime. Consideration of  
8 a defendant's inability to pay may include his or her  
9 future earning capacity. A defendant shall bear the  
10 burden of demonstrating his or her inability to pay.  
11 Express findings by the court as to the factors bearing on  
12 the amount of the fine shall not be required. A separate  
13 hearing for the fine shall not be required.

14 (e) The restitution fine shall not be subject to penalty  
15 assessments as provided in Section 1464, and shall be  
16 deposited in the Restitution Fund in the State Treasury.

17 (f) In every case in which a victim has suffered  
18 economic loss as a result of the defendant's conduct, the  
19 court shall require that the defendant make restitution to  
20 the victim or victims in an amount established by court  
21 order, based on the amount of loss claimed by the victim  
22 or victims or any other showing to the court. If the  
23 amount of loss cannot be ascertained at the time of  
24 sentencing, the restitution order shall include a provision  
25 that the amount shall be determined at the direction of  
26 the court. The court shall order full restitution unless it  
27 finds compelling and extraordinary reasons for not doing  
28 so, and states them on the record.

29 (1) The defendant has the right to a hearing before a  
30 judge to dispute the determination of the amount of  
31 restitution. The court may modify the amount, on its own  
32 motion or on the motion of the district attorney, the  
33 victim or victims, or the defendant. If a motion is made  
34 for modification of a restitution order, the victim shall be  
35 notified of that motion at least 10 days prior to the  
36 proceeding held to decide the motion.

37 (2) Determination of the amount of restitution  
38 ordered pursuant to this subdivision shall not be affected  
39 by the indemnification or subrogation rights of any third  
40 party. Restitution payments made pursuant to this



1 subdivision shall be made to the Restitution Fund to the  
2 extent that the victim, as defined in subdivision (k), has  
3 received assistance pursuant to Article 1 (commencing  
4 with Section 13959) of Chapter 5 of Part 4 of Division 3 of  
5 Title 2 of the Government Code.

6 (3) To the extent possible, the restitution order shall  
7 be prepared by the sentencing court, shall identify each  
8 victim and each loss to which it pertains, and shall be of  
9 a dollar amount that is sufficient to fully reimburse the  
10 victim or victims for every determined economic loss  
11 incurred as the result of the defendant's criminal  
12 conduct, including, but not limited to, all of the following:

13 (A) Full or partial payment for the value of stolen or  
14 damaged property. The value of stolen or damaged  
15 property shall be the replacement cost of like property,  
16 or the actual cost of repairing the property when repair  
17 is possible.

18 (B) Medical expenses.

19 (C) Wages or profits lost due to injury incurred by the  
20 victim, and if the victim is a minor, wages or profits lost  
21 by the minor's parent, parents, guardian, or guardians,  
22 while caring for the injured minor.

23 (D) Wages or profits lost by the victim, and if the  
24 victim is a minor, wages or profits lost by the minor's  
25 parent, parents, guardian, or guardians, due to time spent  
26 as a witness or in assisting the police or prosecution.

27 (E) Noneconomic losses, including, but not limited to,  
28 psychological harm, for felony violations of Section 288.

29 (F) Interest, at the rate of 10 percent per annum, that  
30 accrues as of the date of sentencing or loss, as determined  
31 by the court.

32 (G) Actual and reasonable attorney's fees and other  
33 costs of collection accrued by a private entity on behalf of  
34 the victim.

35 (g) The court shall order full restitution unless it finds  
36 compelling and extraordinary reasons for not doing so,  
37 and states those reasons on the record. A defendant's  
38 inability to pay shall not be considered a compelling and  
39 extraordinary reason not to impose a restitution order,



1 nor shall inability to pay be a consideration in  
2 determining the amount of a restitution order.

3 (h) The district attorney may request an order of  
4 examination pursuant to the procedures specified in  
5 Article 2 (commencing with Section 708.110) of Chapter  
6 6 of Division 2 of Title 9 of Part 2 of the Code of Civil  
7 Procedure, in order to determine the defendant's  
8 financial assets for purposes of collecting on the  
9 restitution order.

10 (i) A restitution order imposed pursuant to subdivision  
11 (f) shall be enforceable as if the order were a civil  
12 judgment, ~~pursuant to Section 1214.~~

13 (j) The making of a restitution order pursuant to  
14 subdivision (f) shall not affect the right of a victim to  
15 recovery from the Restitution Fund as otherwise  
16 provided by law, except to the extent that restitution is  
17 actually collected pursuant to the order. Restitution  
18 collected pursuant to this subdivision shall be credited to  
19 any other judgments for the same losses obtained against  
20 the defendant arising out of the crime for which the  
21 defendant was convicted.

22 (k) For purposes of this section, "victim" shall include  
23 the immediate surviving family of the actual victim.  
24 "Victim" shall also include any corporation, business  
25 trust, estate, trust, partnership, association, joint venture,  
26 government, governmental subdivision, agency, or  
27 instrumentality, or any other legal or commercial entity  
28 when that entity is a direct victim of a crime.

29 (l) At its discretion, the board of supervisors of any  
30 county may impose a fee to cover the actual  
31 administrative cost of collecting the restitution fine, not  
32 to exceed 10 percent of the amount ordered to be paid,  
33 to be added to the restitution fine and included in the  
34 order of the court, the proceeds of which shall be  
35 deposited in the general fund of the county.

36 (m) In every case in which the defendant is granted  
37 probation, the court shall make the payment of  
38 restitution fines and orders imposed pursuant to this  
39 section a condition of probation. Any portion of a  
40 restitution order that remains unsatisfied after a



1 defendant is no longer on probation shall continue to be  
2 enforceable by a victim pursuant to Section 1214 until the  
3 obligation is satisfied.

4 (n) If the court finds and states on the record  
5 compelling and extraordinary reasons why a restitution  
6 fine or full restitution order should not be required, the  
7 court shall order, as a condition of probation, that the  
8 defendant perform specified community service, unless  
9 it finds and states on the record compelling and  
10 extraordinary reasons not to require community service  
11 in addition to the finding that restitution should not be  
12 required. Upon revocation of probation, the court shall  
13 impose restitution pursuant to this section.

14 (o) The provisions of Section 13966.01 of the  
15 Government Code shall apply to restitution imposed  
16 pursuant to this section.

17 *SEC. 2. Section 1203.1 of the Penal Code is amended*  
18 *to read:*

19 1203.1. (a) The court, or judge thereof, in the order  
20 granting probation, may suspend the imposing or the  
21 execution of the sentence and may direct that the  
22 suspension may continue for a period of time not  
23 exceeding the maximum possible term of the sentence,  
24 except as hereinafter set forth, and upon those terms and  
25 conditions as it shall determine. The court, or judge  
26 thereof, in the order granting probation and as a  
27 condition thereof, may imprison the defendant in a  
28 county jail for a period not exceeding the maximum time  
29 fixed by law in the case.

30 However, where the maximum possible term of the  
31 sentence is five years or less, then the period of suspension  
32 of imposition or execution of sentence may, in the  
33 discretion of the court, continue for not over five years.  
34 The following shall apply to this subdivision:

35 (1) The court may fine the defendant in a sum not to  
36 exceed the maximum fine provided by law in the case.

37 (2) The court may, in connection with granting  
38 probation, impose either imprisonment in a county jail or  
39 a fine, both, or neither.



1 (3) The court shall provide for restitution in proper  
2 cases. *The restitution order shall be fully enforceable as*  
3 *a civil judgment forthwith and in accordance with*  
4 *Section 1202.4 of the Penal Code.*

5 (4) The court may require bonds for the faithful  
6 observance and performance of any or all of the  
7 conditions of probation.

8 (b) The court shall consider whether the defendant as  
9 a condition of probation shall make restitution to the  
10 victim or the Restitution Fund. Any restitution payment  
11 received by a probation department in the form of cash  
12 or money order shall be forwarded to the victim within  
13 30 days from the date the payment is received by the  
14 department. Any restitution payment received by a  
15 probation department in the form of a check or draft shall  
16 be forwarded to the victim within 45 days from the date  
17 the payment is received by the department, provided,  
18 that payment need not be forwarded to a victim until 180  
19 days from the date the first payment is received, if the  
20 restitution payments for that victim received by the  
21 probation department total less than fifty dollars (\$50). In  
22 cases where the court has ordered the defendant to pay  
23 restitution to multiple victims and where the  
24 administrative cost of disbursing restitution payments to  
25 multiple victims involves a significant cost, any  
26 restitution payment received by a probation department  
27 shall be forwarded to multiple victims when it is cost  
28 effective to do so, but in no event shall restitution  
29 disbursements be delayed beyond 180 days from the date  
30 the payment is received by the probation department.

31 (c) In counties or cities and counties where road  
32 camps, farms, or other public work is available the court  
33 may place the probationer in the road camp, farm, or  
34 other public work instead of in jail. In this case, Section  
35 25359 of the Government Code shall apply to probation  
36 and the court shall have the same power to require adult  
37 probationers to work, as prisoners confined in the county  
38 jail are required to work, at public work. Each county  
39 board of supervisors may fix the scale of compensation of  
40 the adult probationers in that county.



1 (d) In all cases of probation the court may require as  
2 a condition of probation that the probationer go to work  
3 and earn money for the support of his or her dependents  
4 or to pay any fine imposed or reparation condition, to  
5 keep an account of his or her earnings, to report them to  
6 the probation officer and apply those earnings as directed  
7 by the court.

8 (e) The court shall also consider whether the  
9 defendant as a condition of probation shall make  
10 restitution to a public agency for the costs of an  
11 emergency response pursuant to Article 8 (commencing  
12 with Section 53150) of Chapter 1 of Part 1 of Division 2 of  
13 the Government Code.

14 (f) In all cases in which, as a condition of probation, a  
15 judge of the superior court sitting by authority of law  
16 elsewhere than at the county seat requires a convicted  
17 person to serve his or her sentence at intermittent periods  
18 the sentence may be served on the order of the judge at  
19 the city jail nearest to the place at which the court is  
20 sitting, and the cost of his or her maintenance shall be a  
21 county charge.

22 (g) (1) The court and prosecuting attorney shall  
23 consider whether any defendant who has been convicted  
24 of a nonviolent or nonserious offense and ordered to  
25 participate in community service as a condition of  
26 probation shall be required to engage in the removal of  
27 graffiti in the performance of the community service. For  
28 the purpose of this subdivision, a nonserious offense shall  
29 not include the following:

30 (A) Offenses in violation of the Dangerous Weapons'  
31 Control Law (Chapter 1 (commencing with Section  
32 12000) of Title 2 of Part 4).

33 (B) Offenses involving the use of a dangerous or  
34 deadly weapon, including all violations of Section 417.

35 (C) Offenses involving the use or attempted use of  
36 violence against the person of another or involving injury  
37 to a victim.

38 (D) Offenses involving annoying or molesting  
39 children.



1 (2) Notwithstanding subparagraph (A) of paragraph  
2 (1), any person who violates Section 12101 shall be  
3 ordered to perform not less than 100 hours and not more  
4 than 500 hours of community service as a condition of  
5 probation.

6 (3) The court and the prosecuting attorney need not  
7 consider a defendant pursuant to paragraph (1) if the  
8 following circumstances exist:

9 (A) The defendant was convicted of any offense set  
10 forth in subdivision (c) of Section 667.5 or subdivision (c)  
11 of Section 1192.7.

12 (B) The judge believes that the public safety may be  
13 endangered if the person is ordered to do community  
14 service or the judge believes that the facts or  
15 circumstances or facts and circumstances call for  
16 imposition of a more substantial penalty.

17 (h) The probation officer or his or her designated  
18 representative shall consider whether any defendant  
19 who has been convicted of a nonviolent and nonserious  
20 offense and ordered to participate in community service  
21 as a condition of probation shall be required to engage in  
22 the performance of house repairs or yard services for  
23 senior citizens and the performance of repairs to senior  
24 centers through contact with local senior service  
25 organizations in the performance of the community  
26 service.

27 (i) Upon conviction of any offense involving child  
28 abuse or neglect, the court may require, in addition to any  
29 or all of the above-mentioned terms of imprisonment,  
30 fine, and other reasonable conditions, that the defendant  
31 shall participate in counseling or education programs, or  
32 both, including, but not limited to, parent education or  
33 parenting programs operated by community colleges,  
34 school districts, other public agencies, or private  
35 agencies.

36 (j) The court may impose and require any or all of the  
37 above-mentioned terms of imprisonment, fine, and  
38 conditions, and other reasonable conditions, as it may  
39 determine are fitting and proper to the end that justice  
40 may be done, that amends may be made to society for the



1 breach of the law, for any injury done to any person  
2 resulting from that breach, and generally and specifically  
3 for the reformation and rehabilitation of the probationer,  
4 and that should the probationer violate any of the terms  
5 or conditions imposed by the court in the matter, it shall  
6 have authority to modify and change any and all the  
7 terms and conditions and to reimprison the probationer  
8 in the county jail within the limitations of the penalty of  
9 the public offense involved. Upon the defendant being  
10 released from the county jail under the terms of  
11 probation as originally granted or any modification  
12 subsequently made, and in all cases where confinement  
13 in a county jail has not been a condition of the grant of  
14 probation, the court shall place the defendant or  
15 probationer in and under the charge of the probation  
16 officer of the court, for the period or term fixed for  
17 probation. However, upon the payment of any fine  
18 imposed and the fulfillment of all conditions of probation,  
19 probation shall cease at the end of the term of probation,  
20 or sooner, in the event of modification. In counties and  
21 cities and counties in which there are facilities for taking  
22 fingerprints, those of each probationer shall be taken and  
23 a record of them kept and preserved.

24 (k) Notwithstanding any other provisions of law to the  
25 contrary, except as provided in Section 13967, as  
26 operative on or before September 28, 1994, of the  
27 Government Code and Section 13967.5 of the  
28 Government Code and Sections 1202.4, 1463.16,  
29 paragraph (1) of subdivision (a) of Section 1463.18, and  
30 Section 1464, and Section 1203.04, as operative on or  
31 before August 2, 1995, all fines collected by a county  
32 probation officer in any of the courts of this state, as a  
33 condition of the granting of probation or as a part of the  
34 terms of probation, shall be paid into the county treasury  
35 and placed in the general fund for the use and benefit of  
36 the county.

37 (l) If the court orders restitution to be made to the  
38 victim, the board of supervisors may add a fee to cover the  
39 actual administrative cost of collecting restitution but not  
40 to exceed 10 percent of the total amount ordered to be



1 paid. The fees shall be paid into the general fund of the  
2 county treasury for the use and benefit of the county.

3 ~~Procedure is amended to read:~~

4 ~~577. A judgment is the final determination of the~~  
5 ~~rights of the parties in an action or proceeding, and~~  
6 ~~includes a criminal restitution order as evidenced by a~~  
7 ~~Certified Acknowledgment of Restitution Owed.~~

8 ~~SEC. 2. Section 681.011 is added to the Code of Civil~~  
9 ~~Procedure, to read:~~

10 ~~681.011. (a) A restitution order rendered in a~~  
11 ~~criminal case, not satisfied on termination of probation,~~  
12 ~~may be enforced forthwith as a civil judgment as~~  
13 ~~provided in this title.~~

14 ~~(b) On termination of probation where restitution is~~  
15 ~~not satisfied, each victim named in the restitution order~~  
16 ~~shall assume all the rights and remedies of a judgment~~  
17 ~~creditor as provided in this title as against each defendant~~  
18 ~~named in the restitution order, who shall be designated~~  
19 ~~as, and subject to liability as, a judgment debtor.~~

20 ~~(c) On termination of probation when restitution is~~  
21 ~~not satisfied, a writ of execution shall be issued forthwith~~  
22 ~~by the clerk of the court upon application by the victim~~  
23 ~~as provided for in Section 699.510 when the application is~~  
24 ~~filed with a Certified Acknowledgment of Restitution~~  
25 ~~Owed issued by the criminal court.~~

26 ~~(d) The Judicial Council shall prescribe a form for the~~  
27 ~~Certified Acknowledgment of Restitution Owed.~~

28 ~~SEC. 3. Section 1202.4a is added to the Penal Code, to~~  
29 ~~read:~~

30 ~~1202.4a. (a) Upon entry of a restitution order, a~~  
31 ~~certified copy of that order shall be prepared by the clerk~~  
32 ~~within 24 hours of the entry of the order and shall be~~  
33 ~~served on each named victim and defendant at the~~  
34 ~~current or last known address.~~

35 ~~(b) The certified restitution order shall contain all of~~  
36 ~~the following:~~

37 ~~(1) The title of the court where the order was entered,~~  
38 ~~the case name, and number.~~

39 ~~(2) The date of entry of the order and where the entry~~  
40 ~~is located in the court records.~~



1 ~~(3) The name of each defendant and the amount~~  
2 ~~ordered.~~

3 ~~(4) The social security number and driver's license~~  
4 ~~number of each defendant, and the last known address of~~  
5 ~~each defendant and his or her employer.~~

6 ~~(5) A declaration that the court served each victim~~  
7 ~~and defendant with the certified restitution order, and~~  
8 ~~the date of service.~~

9 ~~(c) All restitution victims and defendants shall be~~  
10 ~~informed by the court on the date of the restitution~~  
11 ~~proceeding of the provisions of Title 9 (commencing with~~  
12 ~~Section 680.010) of Part 2 of the Code of Civil Procedure~~  
13 ~~and that any unpaid restitution may be enforced as a civil~~  
14 ~~judgment on termination of probation.~~

15 ~~(d) (1) When the court supervises probation and~~  
16 ~~restitution payments, and the restitution order is not~~  
17 ~~satisfied on termination of probation, the court clerk shall~~  
18 ~~within five court days of termination of probation, serve~~  
19 ~~each victim, by certified mail, a Certified~~  
20 ~~Acknowledgment of Restitution Owed stating the case~~  
21 ~~name and number, the amount of restitution ordered, the~~  
22 ~~amount of restitution paid, the amount of restitution~~  
23 ~~owed, the defendant's current home address and~~  
24 ~~telephone number, and the current name, address, and~~  
25 ~~telephone number of the defendant's employer.~~

26 ~~(2) When the probation department supervises~~  
27 ~~probation and restitution payments, and the restitution~~  
28 ~~order is not satisfied on termination of probation, the~~  
29 ~~assigned probation officer shall within 72 hours of~~  
30 ~~termination of probation, serve the court, by certified~~  
31 ~~mail, a Certified Acknowledgment of Restitution Owed~~  
32 ~~stating the information required by paragraph (1).~~  
33 ~~Within five court days of the court receiving the Certified~~  
34 ~~Acknowledgment of Restitution Owed from the~~  
35 ~~probation officer, the court clerk shall serve the victim,~~  
36 ~~by certified mail, the Certified Acknowledgment of~~  
37 ~~Restitution Owed.~~

38 ~~SEC. 4. Notwithstanding Section 17610 of the~~  
39 ~~Government Code, if the Commission on State Mandates~~  
40 ~~determines that this act contains costs mandated by the~~



1 ~~state, reimbursement to local agencies and school~~  
2 ~~districts for those costs shall be made pursuant to Part 7~~  
3 ~~(commencing with Section 17500) of Division 4 of Title~~  
4 ~~2 of the Government Code. If the statewide cost of the~~  
5 ~~claim for reimbursement does not exceed one million~~  
6 ~~dollars (\$1,000,000), reimbursement shall be made from~~  
7 ~~the State Mandates Claims Fund.~~  
8 ~~Notwithstanding Section 17580 of the Government~~  
9 ~~Code, unless otherwise specified, the provisions of this act~~  
10 ~~shall become operative on the same date that the act~~  
11 ~~takes effect pursuant to the California Constitution.~~

